

D. WARD KALLSTROM (State Bar No. 76937)
NICOLE A. DILLER (State Bar No. 154842)
ANDREW C. SULLIVAN (State Bar No. 226902)
MORGAN, LEWIS & BOCKIUS LLP
One Market, Spear Street Tower
San Francisco, CA 94105-1126
Tel: 415.442.1000
Fax: 415.442.1001

Attorneys for Defendants
Bay Environmental Management Inc., Caesar Nuti
Dennis Varni, and the Estate of Barbieri

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

JERRY VAUGHN and THERESA
TRAVERS,

Plaintiffs,

vs.

BAY ENVIRONMENTAL
MANAGEMENT INC., CAESAR NUTI,
DENNIS VARNI, FSC SECURITIES
CORPORATION, AND JERROLD N.
WEINBERG

Defendants.

FSC SECURITIES CORPORATION and
JERROLD N. WEINBERG,

Cross-Complainants,

vs.

BAY ENVIRONMENTAL
MANAGEMENT INC., CAESAR NUTI,
and DENNIS VARNI,

Cross-Defendants.

Case No. C-03-5725 MJJ

**STIPULATION AND ~~PROPOSED~~
ORDER RE FSC SECURITIES
CORPORATION AND JERROLD N.
WEINBERG'S MOTION TO
SUBSTITUTE PARTY AND FILING OF
FIRST AMENDED CROSS-CLAIM**

WHEREAS, on December 18, 2003, Plaintiffs Jerry Vaughn and Theresa Travers (the
"Plaintiffs") filed a complaint naming Bay Environmental Management Inc. ("Bay
Environmental"), Mechanics Bank of Richmond ("Mechanics Bank"), Caesar Nuti, Dennis

Varni, and Pina J. Barbieri as defendants (the "Complaint");

WHEREAS, on January 12, 2004, Bay Environmental answered Plaintiffs' Complaint;

WHEREAS, on February 3, 2004, the Court dismissed Mechanics Bank without prejudice;

WHEREAS, on February 27, 2004, Mr. Nuti, Mr. Varni, and Ms. Barbieri answered Plaintiffs' Complaint;

WHEREAS, on January 10, 2005, counsel for Ms. Barbieri filed a Statement of Fact of Death upon the record disclosing her death pursuant to F.R.C.P. 25(a)(1);

WHEREAS, on January 11, 2005, counsel for Ms. Barbieri served the Statement of Fact of Death on Alan Klein, executor of Ms. Barbieri's estate, and filed a certificate of service with the Court on January 12, 2005;

WHEREAS, on March 14, 2005, Plaintiffs filed their First Amended Complaint (the "Amended Complaint") against Bay Environmental, Mr. Nuti, Mr. Varni, Ms. Barbieri, FSC Securities Corporation ("FSC"), and Jerrold N. Weinberg;

WHEREAS, on March 25, 2004, Bay Environmental, Messrs. Nuti and Varni, and, to the extent she retained capacity to be sued as an individual, Ms. Barbieri answered Plaintiffs' Amended Complaint;

WHEREAS, 90 days to substitute estate under Rule 25 expired on April 11, 2005;

WHEREAS, on April 25, 2005, FSC and Mr. Weinberg answered Plaintiffs' Amended Complaint and filed a cross-claim (the "Cross-Claim") against Bay Environmental, Mr. Nuti, Mr. Varni, and Ms. Barbieri;

WHEREAS, on May 17, 2005, Bay Environmental, Messrs. Nuti and Varni answered FSC and Mr. Weinberg's Cross-Claim;

WHEREAS, on July 12, 2005, FSC and Mr. Weinberg filed a motion to substitute party;

WHEREAS, on July 25, 2005, Plaintiffs filed a Statement of Non-Opposition regarding FSC and Mr. Weinberg's motion to substitute party;

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1 NOW, THEREFORE, by and through their attorneys, Plaintiffs, Defendants FSC and Mr.
2 Weinberg, Defendants Bay Environmental, Messrs. Nuti and Varni, and the Estate of Ms.
3 Barbieri (collectively, the "Parties") hereby stipulate and respectfully request the Court to order
4 as follows:

5 1. FSC and Mr. Weinberg shall withdraw their motion to substitute party;

6 2. The Court hereby vacates the hearing on FSC and Weinberg's motion to
7 substitute party, currently scheduled for August 16, 2005, on the basis that it has been
8 withdrawn;

9 3. FSC and Mr. Weinberg's First Amended Cross-Claim (the "Amended Cross-
10 Claim"), attached as Exhibit 1, is deemed filed on the date the Court enters its order pursuant to
11 the Parties' stipulation;

12 4. Plaintiffs, Cross-Defendants Bay Environmental, Messrs. Nuti and Varni, and the
13 Estate of Ms. Barbieri acknowledge service of the Amended Cross-Claim on the date of the
14 Court's order pursuant to the Parties' stipulation; and

15 5. Cross-Defendants Bay Environmental, Messrs. Nuti and Varni, and the Estate of
16 Ms. Barbieri will have 30 days from the date the Court enters its order pursuant to the Parties'
17 stipulation to file a responsive pleading to the Amended Cross-Claim.

18 DATED: August 11, 2005

MORGAN, LEWIS & BOCKIUS LLP

19
20 By: 

D. Ward Kallstrom

Nicole A. Diller

Andrew C. Sullivan

21
22 Attorneys for Defendants

23 Bay Environmental Management Inc., Caesar
24 Nuti, Dennis Varni, and the Estate of Barbieri

25 ///

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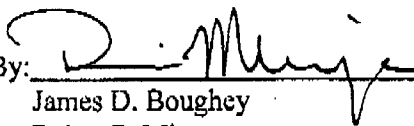
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1 DATED: August 11, 2005

WILSON, ELSE, MOSKOWITZ,
EDELMAN & DICKER LLP

2
3 By: 
4 James D. Boughey
Reina G. Minoya

5 Attorneys for Defendants
6 FSC Securities Corporation and Jerrold N.
7 Weinberg

8 DATED: August 11, 2005

LEWIS, FEINBERG, RENAKER &
JACKSON, P.C.

9
10 By: _____
11 Teresa Renaker
12 Cassie Springer-Sullivan

13 Attorneys for Plaintiffs

14
15 PURSUANT TO STIPULATION, IT IS SO ORDERED.

16
17 DATED: 8/12/2005


18 Honorable Martin J. Jenkins
19 United States District Court

20 1-SF/7271554.1

DATED: August 11, 2005

WILSON, ELSER, MOSKOWITZ,
EDELMAN & DICKER LLP

By: _____

James D. Boughey
Reina G. Minoya

Attorneys for Defendants
FSC Securities Corporation and Jerrold N.
Weinberg

DATED: August 11, 2005

LEWIS, FEINBERG, RENAHER &
JACKSON, P.C.

By: _____

Teresa Renaker
Cassie Springer-Sullivan

Attorneys for Plaintiffs

PURSUANT TO STIPULATION, IT IS SO ORDERED.

DATED: _____

Honorable Martin J. Jenkins
United States District Court

1-SF/7271554.1